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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL FILE

In the Matter of)
)
1992 Annual Access Tariff Filings) CC Docket No. 92-141

OPPOSITION OF
AMERICAN TELEPHONE AND TELEGRAPH COMPANY

Pursuant to Section 1.106(g) of the Commission's Rules, American Telephone and Telegraph Company ("AT&T") hereby opposes the petition for partial reconsideration filed by U S WEST Communications, Inc. ("U S WEST") of the Common Carrier Bureau's ("Bureau") 1992 Annual Access Charge Order.[1] U S WEST alleges that the Bureau's requirement that local exchange carriers ("LECs") allocate sharing adjustments to all price cap baskets "based on the proportion of total revenue in each basket to total interstate revenue,"[2] represents an unreasonably narrow interpretation of the Commission's requirement that shared overearnings adjustments be apportioned among the price cap baskets in a

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1 1992 Annual Access Tariff Filings; National Exchange Carrier Association; Universal Service Fund and Lifeline Assistance Rates, CC Docket No. 92-141, Transmittal No. 495, DA 92-841, Memorandum Opinion and Order Suspending Rates and Designating Issues for Investigation, released June 22, 1992 ("1992 Annual Access Charge Order").

2 1992 Annual Access Charge Order at ¶ 5.

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cost-causative manner.[3] U S WEST therefore contends (p. 3) that the Bureau should reconsider its "single methodology" approach for implementing sharing and also allow LECs "to apply sharing amounts to reduce any current or future amortizations before exogenous costs associated with these amortizations are flowed through to rates." U S WEST's petition represents an untimely petition for reconsideration of rules adopted in the Commission's LEC Price Cap Order, and on that basis alone should be rejected.[4]

The LEC price cap plan requires that capped carriers whose total interstate earnings for the base year exceed specified levels must implement adjustments in their PCIs to reduce rates prospectively, so that the LECs' additional profits under incentive regulation will be shared

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3 47 C.F.R. § 61.45(d)(4); Policy and Rules Concerning Rates for Dominant Carriers, Order on Reconsideration, 6 FCC Rcd. 2637, 2689 (¶ 113) (1991) ("LEC Price Cap Reconsideration Order"), petition for review pending sub nom. Public Service Commission of the District of Columbia v. F.C.C., No. 91-1279 (D.C. Cir., filed June 14, 1991); 47 C.F.R. § 61.45(d)(2). U S WEST (p. 2) frankly admits that it does not disagree with the Bureau's conclusion that a revenue-based allocator for apportioning sharing amounts among the price cap baskets is more consistent with price cap goals than an earnings-based allocator.

4 See Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd. 6786, 6801-6806 (¶¶ 120-163) (1990) ("LEC Price Cap Order"), recon. denied, 6 FCC Rcd. 2637 (1991).

with their customers.[5] In the LEC Price Cap Order, the Commission held expressly that LECs must share overearnings with their customers in a particular manner. Specifically, the Commission determined that "[t]he customer share plus interest will be returned in the form of a one-time reduction in the PCI for the next rate period . . . ."[6] The Commission further stated that

> "backstop sharing and [low end] adjustment mechanisms are adopted as rules pursuant to Sections 201 through 203, and as a prescription pursuant to 205(a) and 4(i) of the Communications Act. . . . [P]roposed rate changes that fail to comply with these rules (e.g., rates that fail to incorporate rate reductions mandated by earnings in the 50-50 sharing zone or all sharing zone . . .) will be subject to rejection or other appropriate corrective action."[7]

Despite this explicit Commission rule governing the method LECs shall use to impement sharing of any overearnings, U S WEST now requests the Bureau to allow LECs the option of applying sharing amounts to reduce currrent or

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[5] 5 FCC Rcd. at 6801-6806 (¶¶ 120-163). LECs that have elected a productivity offset of 3.3 percent are required to share 50 percent of their earnings between 12.25 percent and 16.25 percent in the base period, and all earnings above the latter threshold. Carriers that elect a 4.3 percent productivity offset may retain 50 percent of their earnings between 13.25 percent and 17.25 percent, before being required to return all earnings above that level. See 5 FCC Rcd. at 6801-6802 (¶¶ 124-126).

[6] Id., 5 FCC Rcd. at 6801 (¶ 124). Section 61.45(d)(4) of the Commission's Rules further requires that these reductions must be apportioned among the price cap baskets "on a cost-causative basis."

[7] LEC Price Cap Order, 5 FCC Rcd. at 6802 (¶ 128).

future amortizations rather than passing through the "shared" amount as a one-time price cap index ("PCI") adjustment. U S WEST could have raised this concern before the full Commission by filing a timely petition for reconsideration of the LEC Price Cap Order. U S WEST, however, chose not to file such a petition, and it cannot now seek the identical relief from the Bureau. Indeed, because the Commission has expressly mandated that a LEC's sharing obligation be implemented as a "one-time reduction of the PCI in the next rate period," the Bureau is not free to adopt a different rule in the context of an access charge proceeding and thereby modify the LEC price cap plan adopted by the Commission.

In all events, even if U S WEST's petition could be entertained (which it should not be), the proposal is inconsistent with fundamental policy considerations underlying the LEC price cap plan. In adopting the sharing mechanism, the Commission sought to ensure that "consumers will receive their fair share of productivity gains . . . , just as they would in an industry with keener competition."[8] By requiring a PCI reduction in the rate period immediately following the one in which the overearnings arose, the Commission sought to ensure a prompt return of overearnings to the customer base that paid the excessive charges.

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8 LEC Price Cap Order, 5 FCC Rcd. at 6801 (¶ 124).

Applying sharing amounts to amortizations, as U S WEST suggests, would not fulfill these objectives for several reasons. First, amortizations are not necessarily borne by customers, because a LEC can choose to write off amortizations. If a sharing amount reduced such a write-off, it would not serve to return overearnings to customers. Second, U S WEST has no current amortization being charged to customers against which to apply a sharing amount. The example of a future amortization that U S WEST cites, the "residual interconnection charge" proposed by the Commission in the Local Transport proceeding, has not yet been adopted (and may never be adopted).[9] In any event, even if such a charge were adopted in the future, applying overearnings to "amortize" this charge would not serve to refund prior overearnings to customers promptly. Instead, it would permit LECs to hold onto overearnings for an extended period of time well beyond the "next rate period," that the Commission required that overearnings be refunded. A prospective reduction of the amortization at that later time would likely

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[9] In all events, whether a Local Transport residual interconnection charge will be adopted and how it will be funded is a matter outside the scope of the 1992 annual access charge proceeding. This issue will be resolved in _MTS and WATS Market Structure; Transport Rate Structure and Pricing_, Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd. 5341 (1991) ("Local Transport Proceeding").

enure to the benefit of a different customer mix than the one from whom the overearnings had been collected.[10]

Finally, application of overearnings to amortizations would not fulfill the Commission's requirement that sharing amounts be allocated among the price cap baskets in a cost-causative manner. The offset that U S WEST proposes for its sharing obligations, the "residual interconnection charge," affects only the Traffic Sensitive Basket. Thus, allocation of overearnings solely to this basket would be contrary to the Commission's requirement that overearnings be allocated across all price cap baskets in a cost-causative manner.

[10] For example, as access customers reconfigure their services and the market share of interexchange carriers ("IXCs") fluctuates over time, any delay in refunding overearnings to customers could result in refunds of overearnings paid by one IXC's customers being remitted to the customers of a different IXC.

For all of these reasons, U S WEST's petition for partial reconsideration should be denied.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

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August 4, 1992

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, hereby certify that a true copy of the foregoing "Opposition of American Telephone and Telegraph Company" was served this 4th day of August, 1992, by first class mail, postage prepaid, on the parties listed on the attached service list.

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